

MUNCHAUSEN SYNDROME BY PROXY: A PHYSICIAN'S RESPONSIBILITY TO REPORT

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I. A PHYSICIAN'S RESPONSIBILITY TO REPORT MUNCHAUSEN SYNDROME BY PROXY

Munchausen Syndrome by Proxy (“MSBP”), or Factitious Disorder by Proxy,¹ was first described as a form of child abuse in 1977.² Consequently, physicians are responsible for reporting this abuse, much like they are required to report physical or sexual abuse. In order to ensure that physicians were not deterred from reporting child abuse, Congress enacted the Child Abuse Prevention and Treatment Act (“CAPTA”) in 1996.³ CAPTA requires states to enact some form of reporting law to obtain federal funding.⁴ The Child Abuse Prevention and Treatment Act was not more specific as to what reporting measures are required; thus, differences exist between state statutes, so the reporting standard will be examined herein.

Encouraging physicians and other medical professionals to report child abuse is of the utmost importance; thus, the reporting standard for Munchausen Syndrome by Proxy should remain at good faith and no additional requirements should be imposed. A uniform standard needs to be adopted, as the frequency of Munchausen Syndrome by Proxy is increasing.⁵ “In a 1988 survey of sixteen hospitals from fourteen states, sixty-eight suspected cases were reported

¹ *Harville v. Vanderbilt Univ.*, 95 F. App'x 719, 722 (6th Cir. 2003).

² Kimberly L. Sweet, *Munchausen Syndrome by Proxy: Treatment in the Courts*, 16 Buff. Women's L. J. 89, 90 (2008).

³ Corey M. Perman, *Legal Protections and Ramifications for the Medical Community in Identifying and Treating Munchausen Syndrome by Proxy*. LexisNexis Expert Commentary, 2008 Emerging Issues 2442, (Oct 1, 2009).

⁴ 42 U.S.C.A. §5106.

⁵ Sweet, *supra* at 91; Tracy Vollaro, Note, *Munchausen Syndrome by Proxy and Its Evidentiary Problems*, 22 Hofstra L. Rev. 495, 499 (1993).

with thirty-two diagnosed cases in the preceding three to five years.”⁶ The increased frequency suggests that MSBP may be a more widespread problem than was previously thought.⁷ “The fact that society accepts Munchausen Syndrome by Proxy as a rare disorder in spite of the data indicating otherwise leads to under-recognition and consequently under-reporting....”⁸ This disorder needs to be examined because of the high fatality rate it poses towards the victims; estimates range from nine percent⁹ to ten percent of MSBP victims die before the disorder is diagnosed in the perpetrator.¹⁰

The focus of this note is to provide an analysis of the good faith standard and what physicians should be required to report. Part II of this paper examines the history, characteristics, and elements of Munchausen Syndrome by Proxy, and also looks at the problems faced by physicians when faced with diagnosing Munchausen Syndrome by Proxy. Part III looks at the origin of MSBP case law as a criminal matter, but focuses on three recent court rulings in different jurisdictions that address the civil remedies for those who have been accused of child abuse by means of Munchausen Syndrome by Proxy. Part III looks at federal legislation that addresses the reporting of child abuse, which many states have modeled their reporting statutes after. Part IV analyzes the good faith standard and additional reporting requirements. Part V evaluates the standard, addresses the concerns of opponents of the good faith standard, and recommends coming up with a good faith standard, which holds the policy of child protection as the utmost consideration.

⁶ Michael T. Flannery, *Munchausen Syndrome by Proxy: Broadening the Scope of Child Abuse*, 28 U. Rich. L. Rev. 1175, 1187-88 (1994).

⁷ Vollaro, *supra* at 499.

⁸ Flannery, *supra* at 1188.

⁹ Treuman Katz, Editorial, ‘Persecution or Prosecution?’ *Munchausen by Proxy a Lethal Form of Child Abuse*, *Seattle Post-Intelligencer*, August 12, 2002, at B5.

¹⁰ See Sweet, *supra* at 91.

II. THE BACKGROUND OF MUNCHAUSEN SYNDROME BY PROXY AND PROBLEMS PHYSICIANS FACE WHEN DIAGNOSING THIS SYNDROME

A. The Origin of Munchausen Syndrome by Proxy

In 1951, Munchausen Syndrome was first recognized by Dr. Richard Asher¹¹ as a disorder in which one seeks out medical care.¹² The name of the disorder is derived from Hieronymus Karl Friedrich Freiherr von Munchausen,¹³ a politician famous for his exaggerated stories in the 1700s.¹⁴ “Munchausen’s tales gained a fabled following in popular literature throughout the twentieth century.”¹⁵ An individual with Munchausen Syndrome feigns illness or purposefully makes himself ill in order to gain access to hospitals and physicians.¹⁶ Munchausen Syndrome patients “offer fanciful stories regarding the nature and origin of their ailments, which they purposely alter at different hospitals.”¹⁷

In 1977, British pediatrician Roy Meadow authored “Munchausen Syndrome by Proxy, The Hinterland of Child Abuse,”¹⁸ which described the disorder as a new type of child abuse.¹⁹ Meadow observed a pattern where mothers would ask for their children to be treated, yet the illnesses were feigned or were caused by the mothers’ own actions.²⁰ Dr. Meadow termed this

¹¹ Corey M. Perman, Note, *Diagnosing the Truth: Determining Physician Liability in Cases Involving Munchausen Syndrome by Proxy*, 54 Wash. U. J. Urb. & Contemp. L. 267, 271 (1998).

¹² Marie M. Brady, *Munchausen Syndrome by Proxy: How Should We Weigh Our Options?*, 18 Law & Psychol. Rev. 361, 362 (1994).

¹³ Flannery, *supra* at 1181.

¹⁴ Suzanne Painter Mochow, *Munchausen Syndrome by Proxy: A Subtle Form of Child Abuse and a Potential Due Process Nightmare*, 18 J. Juv. L. 167, 167 (1997).

¹⁵ Perman, *Diagnosing the Truth*, *supra* at 271.

¹⁶ Brady, *supra* at 362.

¹⁷ Perman, *Diagnosing the Truth*, *supra* at 271.

¹⁸ *State v. McMullen*, 900 A.2d 103, 109 (Del. Super. 2006).

¹⁹ Sweet, *supra* at 90.

²⁰ *Id.*

behavior Munchausen Syndrome by Proxy.²¹ This disorder has also been called Meadow's Syndrome.²²

Munchausen Syndrome by Proxy commonly has four characteristics.²³ First, “[t]he child suffers from an illness that is induced or falsified by a parent or guardian.”²⁴ Second, the parent repeatedly asks for medical evaluation of the child.²⁵ Third, the parent or guardian denies any knowledge of the cause of the child's illness.²⁶ Finally, the symptoms stop when the child and abuser are separated.²⁷ Noticeably absent from the characteristics are external incentives for the person's behavior “such as economic gain, avoidance of legal responsibility, or improved physical well-being....”²⁸ Munchausen Syndrome by Proxy was added to the most recent version of the American Psychiatric Association's Diagnostic and Statistical Manual (DSM-IV)²⁹ under the term “Factitious Disorders.”³⁰

B. The MSBP Perpetrators

There are three categories of Munchausen Syndrome by Proxy sufferers: doctor addicts,³¹ active inducers,³² and help seekers.³³ A doctor addict exaggerates or stages the child's

²¹ *Id.*

²² Ralph Slovenko, Comment, *Patients Who Deceive*, 18 *Med. & L.* 653, 655 (1999).

²³ Sweet, *supra* at 90.

²⁴ *Id.*

²⁵ Michael T. Flannery, *Munchausen Syndrome by Proxy: Broadening the Scope of Child Abuse*, 28 *U. Rich. L. Rev.* 1175, 1184 (1994).

²⁶ *Id.*

²⁷ *Id.*

²⁸ Slovenko, *supra* at 654.

²⁹ Melissa A. Prentice, Note, *Prosecuting Mothers Who Maim and Kill: The Profile of Munchausen Syndrome by Proxy Litigation in the Late 1990s*, 28 *Am. J. Crim. L.* 373, 377 (2001).

³⁰ Slovenko, *supra* at 654.

³¹ Sweet, *supra* at 92.

³² *Id.* at 92.

³³ Flannery, *supra* at 1193.

symptoms.³⁴ Then this individual obsessively seeks out a physician’s assistance for the child’s feigned illness.³⁵ Doctor addicts tend to show paranoid tendencies towards the hospital staff.³⁶

Active inducers generate symptoms in the child by poisoning or smothering the child.³⁷ The active inducer is “resistant to medical or professional intervention and camouflage[s]... [her] psychiatric problems with overtly commendable parenting.”³⁸ Help seekers “displace the distress surrounding their personal problems by reporting distressing symptoms for the child.”³⁹ In contrast to the active inducer and doctor addict, a health seeker embraces counseling and psychiatric assistance.⁴⁰ Identifying which category a Munchausen Syndrome by Proxy perpetrator falls into may be complicated because many cases involve the perpetrator feigning illness and inducing illness in the child.⁴¹

1. MSBP Mothers

In a typical MSBP case, the abuser is the mother.⁴² The age of the Munchausen Syndrome by Proxy mother is usually between twenty and twenty-five.⁴³ The mother may also have a history of mental illness or medical problems.⁴⁴ It is not uncommon that she may suffer from Munchausen Syndrome.⁴⁵ Quite frequently, Munchausen Syndrome by Proxy mothers have

³⁴ Sweet, *supra* at 92.

³⁵ *Id.*

³⁶ Flannery, *supra* at 1193.

³⁷ *Id.*

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ Sweet, *supra* at 92.

⁴² *People v. Phillips*, 175 Cal. Rptr. 703, 709 (Cal. Ct. App. 1981); *See* Sweet, *supra* at 92.

⁴³ Flannery, *supra* at 1189.

⁴⁴ Sweet, *supra* at 93.

⁴⁵ *Id.*

suffered from child abuse.⁴⁶ In addition, the mother often has “an unstable relationship with the child’s natural father.”⁴⁷ It is a combination of these factors that leads the mother to favor a hospital environment over her home or work environment.⁴⁸

MSBP mothers often engage in ipecac poisoning, insulin injections, and/or administration of laxatives of their children⁴⁹ to gain access to hospitals and physicians. The typical Munchausen Syndrome by Proxy perpetrator does not display the characteristics of an abusive parent because of her timeliness at seeking medical attention for the child and her eagerness to provide information.⁵⁰ Other types of abusive parents wait to seek medical help and do not cooperate with doctors or nurses.⁵¹ In addition, an MSBP parent is attentive and desires the opportunity to care for her child and help him regain his health, unlike a traditionally abusive parent who does not want to deal with her sick child.⁵²

To others, the mother appears to be devoted to the child.⁵³ When the child is brought into the hospital, the mother does extremely well on the ward.⁵⁴ This may be because the perpetrator often has training or knowledge in the field of health care.⁵⁵ ““The concern, competence and intelligence of these mothers ... makes it hard for the doctors to suspect them as the possible cause of their child’s illness....”⁵⁶

⁴⁶ Flannery, *supra* at 1191; Sweet, *supra* at 93.

⁴⁷ Flannery, *supra* at 1191.

⁴⁸ *See Id.*

⁴⁹ *Id.* at 1186.

⁵⁰ Brady, *supra* at 364.

⁵¹ *Id.*

⁵² *Id.*

⁵³ Phillips, 175 Cal. Rptr. at 709.

⁵⁴ *Id.*

⁵⁵ Brady, *supra* at 363.

⁵⁶ Phillips, 175 Cal. Rptr. 703 at 709.

A Munchausen Syndrome by Proxy mother will often seek media coverage for her child's "unknown" illness.⁵⁷ For example, Theresa Milbrandt had told members of her community of Urbana, Ohio that her daughter, Hannah, was suffering from leukemia.⁵⁸ Milbrandt shaved her daughter's head so it would appear that the child was undergoing chemotherapy treatments and gave the child "sleeping pills and other drugs so that [her daughter] would become tired and sickly."⁵⁹ By gaining the sympathies of the community, many charity events were held to raise money to pay for Hannah's alleged medical bills.⁶⁰ Children's Services investigated and determined that Hannah did not have cancer, and that the symptoms had been feigned by her mother.⁶¹

2. MSBP Fathers

Very rarely are fathers Munchausen Syndrome by Proxy perpetrators.⁶² However, one study indicates that the number of MSBP perpetrators that are fathers may be higher than previously thought because diagnosis among Munchausen Syndrome by Proxy fathers is much more difficult because they "may not demonstrate the patterned behaviors shown by female caretakers."⁶³ Even if the father is not harming the child directly, usually the father is not actively

⁵⁷ Sweet, *supra* at 93.

⁵⁸ Toby Harden, *Mother faked child's cancer for charity*, Telegraph.co.uk, Dec. 23, 2002, available at <http://www.telegraph.co.uk/news/worldnews/northamerica/usa/1416921/Mother-faked-childs-cancer-for-charity.html>.

⁵⁹ *Id.*

⁶⁰ *Id.*

⁶¹ *Id.*

⁶² Flannery, *supra* at 1196.

⁶³ *Id.* at 1197.

involved in the home environment.⁶⁴ The father's denial of the child's abuse tends to perpetuate the cycle, as this causes the mother to fear alienation by the father if she admits to the abuse.⁶⁵

C. Victims of MSBP

The victims of Munchausen Syndrome by Proxy are diagnosed with having Pediatric Condition Falsification ("PCF").⁶⁶ Children experience PCF when "an adult, usually a caretaker, falsifies or induces physical or psychological symptoms of illness causing the child to receive medical or psychiatric treatment for the illness."⁶⁷ Children who are victims of Munchausen Syndrome by Proxy typically undergo invasive medical procedures.⁶⁸ Pediatric Condition Falsification should not be used interchangeably with Munchausen Syndrome by Proxy, as MSBP is the disorder experienced by the parent or caretaker, and PCF is the result suffered by the child.⁶⁹

The typical victim of Munchausen Syndrome by Proxy is usually less than six years of age⁷⁰ and frequently is less than two years old.⁷¹ Occasionally, a fetus may fall victim to Munchausen Syndrome by Proxy.⁷² Whatever the age of the PCF child, this child is different from the typical victim of child abuse,⁷³ thereby further complicating a physician's diagnosis of

⁶⁴ *Id.*

⁶⁵ *Id.*

⁶⁶ *State v. McMullen*, 800 A.2d 103, 103 (Del.Super. 2006).

⁶⁷ *Id.* at 103.

⁶⁸ Perman, *Diagnosing the Truth*, *supra* at 272.

⁶⁹ *See McMullen*, 800 A.2d. at 103.

⁷⁰ Brady, *supra* at 364.

⁷¹ Phillips, 175 Cal. Rptr. at 709.

⁷² Flannery, *supra* at 1201.

⁷³ Brady, *supra* at 364.

MSBP. Other victims of child abuse are typically passive and withdrawn.⁷⁴ In addition, an abused child will not become upset when approached by a stranger, nor will the child negatively react if he is separated from his parent.⁷⁵ In contrast, a Pediatric Condition Falsification child is attached to the perpetrator and “displays increasingly positive emotions as he or she is regaining health.”⁷⁶

According to Dr. Meadow, children who are thought to be ill instead of being diagnosed with MSBP suffer five consequences.⁷⁷ First, these children undergo unnecessary examinations and harmful treatments.⁷⁸ Second, the child victims may die as a result of the harm inflicted by the MSBP parent.⁷⁹ Third, the victims may develop a genuine disease.⁸⁰ Fourth and fifth, long term consequences such as the child identifying himself as being disabled, or developing Munchausen Syndrome are also possible.⁸¹

D. Problems with Diagnosing Munchausen Syndrome by Proxy

Physicians face many different problems with diagnosing Munchausen Syndrome by Proxy. Rarely do physicians initially think of MSBP as being responsible for the child’s symptoms.⁸² Instead of being viewed as a perpetrator, the parent is instead viewed as being

⁷⁴ *Id.*

⁷⁵ *Id.*

⁷⁶ *Id.*

⁷⁷ Perman, *Diagnosing the Truth*, *supra* at 276.

⁷⁸ *Id.*

⁷⁹ *Id.*

⁸⁰ *Id.*

⁸¹ *Id.*

⁸² Brady, *supra* at 365.

devoted to her child, and is rarely suspected of this abuse, unless there are obvious signs of mental illness in the parent.⁸³

Another complication physicians may face is that it may be difficult to differentiate an overprotective parent from a Munchausen Syndrome by Proxy parent.⁸⁴ However, physicians can discern between these two types of parents by looking to the parent's motivation for seeking care for her child.⁸⁵ An overprotective mother is motivated by her concern for the child's well-being.⁸⁶ In contrast, a Munchausen Syndrome by Proxy mother is motivated to fulfill her own needs.⁸⁷

Diagnosis of MSBP is further complicated by the wide range of symptoms experienced by the Pediatric Condition Falsification victims.⁸⁸ Symptoms include seizures, diarrhea, vomiting, irritable bowel syndrome, blood-borne infections, and apnea.⁸⁹ Common treatments for these symptoms are ineffective, as the symptoms are induced by the Munchausen Syndrome by Proxy perpetrator or are fictitious; consequently, symptoms are likely to persist.⁹⁰ If a Pediatric Condition Falsification child undergoes treatment without the physician having full an accurate medical history, there is a risk of error because the physician has falsified information.⁹¹ In addition, diagnostic procedures can often further harm the child.⁹² Further complicating the

⁸³ Slovenko, *supra* at 656.

⁸⁴ Vollaro, *supra* at 512.

⁸⁵ *See Id.* at 514.

⁸⁶ *Id.*

⁸⁷ *Id.* at 515.

⁸⁸ Mochow, *supra* at 168.

⁸⁹ *Id.* at 168.

⁹⁰ Perman, *Diagnosing the Truth, supra* at 273-74.

⁹¹ *Id.* at 275.

⁹² Flannery, *supra* at 1182.

matter, the American Academy of Pediatrics does not have a policy that addresses how to deal with the disorder.⁹³

Although diagnosis is difficult, physicians can note certain characteristics, in order to make a determination that the child is suffering from Munchausen Syndrome by Proxy. The physician can look for a close parent-child relationship, in which the child is overly dependent on the parent.⁹⁴ The physician can also view the parent's recitation of the child's medical history with skepticism.⁹⁵ In addition, the doctor can notice if the child's symptoms to cease when the parent does not have contact with the child.⁹⁶ A physician's ability to diagnose Munchausen Syndrome by Proxy is crucial in preventing additional PCF victims, as the recidivism rate of MSBP perpetrators is high involving siblings.⁹⁷ "[S]ome commentators estimate that the rate may be as high as thirty-three percent."⁹⁸

Once MSBP is suspected, the physician faces the issue of how to confront the suspected perpetrator.⁹⁹ When a Munchausen Syndrome by Proxy perpetrator is accused of making her child sick, she typically denies that she is the cause of her child's illness.¹⁰⁰ She may also become enraged by the accusations.¹⁰¹ Fear of the mother's response or unwillingness to deal with a parent in denial should not deter a physician from undergoing this process. Several parties are at risk if a physician refuses to reveal a suspected case of Munchausen Syndrome by Proxy:

⁹³ Prentice, *supra* at 377.

⁹⁴ Brady, *supra* at 365.

⁹⁵ See Perman, *Diagnosing the Truth*, *supra* at 277.

⁹⁶ Brady, *supra* at 365.

⁹⁷ Flannery, *supra* at 1193.

⁹⁸ *Id.*

⁹⁹ Perman, *Diagnosing the Truth*, *supra* at 274.

¹⁰⁰ Brady, *supra* at 364.

¹⁰¹ Vollaro, *supra* at 499.

“the child continues to suffer medical complications, the parent continues to abuse the child, and the physician continues to risk legal liability.”¹⁰²

III. MUNCHAUSEN BY PROXY SYNDROME CASE LAW: FROM CRIMINALCHARGES TO CIVIL REMEDIES

A. Munchausen Syndrome by Proxy’s Criminal Origin

The first case involving Munchausen Syndrome by Proxy is *People v. Phillips*.¹⁰³ Priscilla Phillips adopted a Korean infant, Tia, who was in good health at the time of adoption.¹⁰⁴ Shortly thereafter, Phillips began to bring her daughter to see different physicians many times for fever, vomiting, ear infections, and diarrhea.¹⁰⁵ A year later, Tia was admitted to the emergency room because she was having seizures.¹⁰⁶ This was Tia’s last hospital visit, and she tragically died.¹⁰⁷

Shortly after, Phillips adopted another Korean infant, named Mindy.¹⁰⁸ Mindy began to experience vomiting and diarrhea, much like Tia.¹⁰⁹ Mindy’s physician had treated Tia, and he noticed the similarities between the two cases, and concluded that the children had been poisoned.¹¹⁰ When Phillips was forbidden from seeing Mindy without supervision, Mindy improved.¹¹¹

¹⁰² Perman, *Diagnosing the Truth*, *supra* at 280.

¹⁰³ Brady, *supra* at 366.

¹⁰⁴ *Phillips*, 175 Cal. Rptr. at 705.

¹⁰⁵ *Id.* at 706.

¹⁰⁶ *Id.* at 707.

¹⁰⁷ *Id.*

¹⁰⁸ *Id.*

¹⁰⁹ *Id.*

¹¹⁰ *Phillips*, 175 Cal. Rptr. at 707.

¹¹¹ *Id.* at 708.

Although Munchausen Syndrome by Proxy was not recognized in the Diagnostic and Statistic Manual in 1981, testimony by a psychiatrist about MSBP was allowed by the court as expert witness testimony to show motive.¹¹² The court held that testimony by the expert was allowed based on reports made by others because the reports met the required standard of reliability.¹¹³ Phillips was convicted of criminal charges of murdering Tia and willfully endangering the health or life of her Mindy.¹¹⁴

B. A Review of Recent Munchausen Syndrome by Proxy Case Law

Because Munchausen Syndrome by Proxy is now recognized by the DSM-IV,¹¹⁵ problems that were present for the prosecution in *Phillips* no longer exist today. However, the challenge in MSBP cases now is that parents or guardians who face criminal charges or have their children taken away by children's services because of a Munchausen Syndrome by Proxy diagnosis file medical malpractice suits against the physicians or medical professionals who reported the abuse. At the heart of the matter lies the state reporting standard, which protects those who report suspected cases of child abuse. Three different state court decisions will be examined herein, in order to determine if any discrepancies in an appropriate standard exist across state lines.

In *Harville v. Vanderbilt University*, the Sixth Circuit Court of Appeals addressed the issue of physician liability for reporting a suspected case of Munchausen Syndrome by Proxy to the state's Department of Children's Services, which resulted in the child being temporarily

¹¹² *Id.* at 713-14.

¹¹³ *Id.* at 712-13.

¹¹⁴ *Id.* at 705.

¹¹⁵ *See Sweet, supra* at 90.

removed from the home.¹¹⁶ The Harvilles brought their grandson, Joseph, to Vanderbilt Children’s Hospital, where the child saw Dr. Scholer.¹¹⁷ Joseph appeared alert and under no distress, and the doctor could not explain the child’s symptoms that were reported by Mrs. Harville, such as spells of choking and gagging.¹¹⁸ Scholer consulted with other physicians at the hospital, ultimately concluding that this was a behavioral disease and reported it to Department of Children’s Services.¹¹⁹

In *Harville*, the court based its analysis on the Tennessee State Code, Section 37-1-403(a), which says that anyone with knowledge of child abuse is required to report it to the authorities.¹²⁰ In addition, Section 37-1-401(a) states that “[a]n individual reporting such harm is presumed to be acting in good faith and is immune from liability, civil or criminal, that might otherwise be incurred or imposed for such action.”¹²¹ The court found the burden of proof was on the plaintiffs to show by clear and convincing evidence that the defendants acted in bad faith.¹²² The court also held that even a negligent diagnosis would not meet the burden required to demonstrate bad faith.¹²³ The overriding public policy concern is to encourage child abuse to be reported,¹²⁴ which justifies such a high standard.

The Court of Appeals of Washington addressed the issue of physician liability for reporting a suspected case of Munchausen Syndrome by Proxy in *Yuille v. Department of Social and Health Services*.¹²⁵ In this case, Child Protective Services removed two adopted child from

¹¹⁶ *Harville*, 95 F. App’x at 722.

¹¹⁷ *Id.* at 720-21.

¹¹⁸ *Id.* at 721.

¹¹⁹ *Id.* at 722.

¹²⁰ *Id.* at 725.

¹²¹ *Id.* at 725-26.

¹²² *Harville*, 95 F. App’x at 726.

¹²³ *Id.*

¹²⁴ *See Id.* at 725-26.

¹²⁵ *Yuille v. Dep’t of Soc. & Health Serv.*, 45 P.3d 1107, 1109 (Wash. Ct. App. 2002).

the suspect's home, because their physician suspected the adoptive mother had Munchausen Syndrome by Proxy.¹²⁶ Washington's Code, much like Tennessee's Code, requires suspected child abuse to be reported and sets the standard for reporting at good faith.¹²⁷ Unlike in Tennessee, in Washington the burden of proof is on the reporter to prove that "the report of abuse was made in good faith."¹²⁸

The *Yuille* court held that good faith could be satisfied even if the physician did not investigate or verify the abuse, as the "duty to investigate lies with the authorities, not the individual making the report."¹²⁹ The court tied this in with the policy of encouraging suspected child abuse to be reporting, and found that this policy would be hindered if investigation was required for immunity.¹³⁰ The court determined that because the defendants thought they were acting in the children's best interests, they met the good faith standard for reporting child abuse.¹³¹ In addition, the court was convinced the defendants acted in good faith because the defendant physician had consulted with the children's doctors and worked with the Hospital's team when making a diagnosis.¹³²

The United States District Court for the District of South Dakota has addressed the issue of whether good faith in reporting is sufficient to prevent a physician from facing liability.¹³³ In *Johnson v. Pediatric Specialists of Sioux Falls*, the Johnson's daughter, Thea was hospitalized for an infection and resulting complications at St. Luke's.¹³⁴ The child suffered other health

¹²⁶ *Id.* at 1110.

¹²⁷ *Id.* at 1108.

¹²⁸ *Id.* at 1110.

¹²⁹ *Id.* at 1111.

¹³⁰ *Id.*

¹³¹ *Yuille*, 45 P.3d at 1111.

¹³² *Id.*

¹³³ See *Johnson v. Pediatric Specialists of Sioux Falls*, 2001 WL 34091570 (D.S.D. 2001).

¹³⁴ *Id.*

problems, including pneumonia, so she was transferred to Sioux Valley Hospital.¹³⁵ Shortly thereafter, Thea suffered from problems with a feeding tube and a Hickman catheter.¹³⁶ St. Luke’s reported a suspected case of Munchausen Syndrome by Proxy to the Department of Social Services and Sioux Valley Hospital was contacted about this report.¹³⁷ Dr. Lang contacted the physicians at St. Luke’s to discuss Thea’s case, before he filed an affidavit with the Department of Social Services.¹³⁸

South Dakota’s Code requires physicians or nurses to make a report when there is reasonable cause to suspect a child is being abused.¹³⁹ The court found that immunity is crucial to achieve the public policy of reporting and investigating “child abuse without fear of reprisal.”¹⁴⁰ In this trial for civil liability of the doctor, the court focused on South Dakota’s Code which “provides immunity for reporting child abuse if there is a good faith, reasonable cause to suspect abuse.”¹⁴¹ “Good faith” has been defined by the South Dakota Supreme Court as “performing honestly, with proper motive, even if negligently.”¹⁴² Although the physician may have been negligent in diagnosing Mrs. Johnson with Munchausen Syndrome by Proxy, the court concluded that there was nothing to dispute the doctor’s good faith and dismissed the lawsuit.¹⁴³

C. Federal Legislation and Child Abuse Reporting Statutes

¹³⁵ *Id.*

¹³⁶ *Id.*

¹³⁷ *See Id.*

¹³⁸ *Id.* at 2

¹³⁹ S.D. Codified Laws Ann §26-8A-3; *Johnson*, 2001 WL 34091570, at *3.

¹⁴⁰ *Johnson*, 2001 WL 34091570, at *4.

¹⁴¹ *Id.* at *3.

¹⁴² *Id.* at *5.

¹⁴³ *Id.*

“Under the Child Abuse Prevention and Treatment Act (“CAPTA”)... states were required to enact some form of a *mandatory* child abuse and neglect reporting law in order to qualify for funding under the federal act.”¹⁴⁴ According to CAPTA, states must enact legislation that provides for immunity from prosecution for reporting cases of suspect child abuse or neglect.¹⁴⁵ To receive federal grants under the Child Abuse Prevention and Treatment Act, states must offer immunity to those who report child abuse in good faith.¹⁴⁶ “The term ‘good faith’ refers to the assumption that the reporter, to the best of his or her knowledge, had reason to believe that the child in question was being subjected to abuse or neglect.”¹⁴⁷

IV. THE REPORTING STANDARD FOR MUNCHAUSEN BY PROXY SYNDROME

A. Good Faith Reporting

Good faith is a high standard to disprove and thus it protects those who report suspected cases of child abuse, specifically victims of Munchausen Syndrome by Proxy. By looking at the Washington, Tennessee, and South Dakota Codes and case law, a clear picture of how high this standard is can be established. The courts in *Harville* and *Johnson* both articulated that even a showing of a physician’s negligence would not prove that the physician lacked good faith.¹⁴⁸ The *Johnson* court determined that even though the physician was negligent, good faith was still present.¹⁴⁹

¹⁴⁴ Perman, *Legal Protections*, *supra*.

¹⁴⁵ *Id.*

¹⁴⁶ *Id.*; 42 U.S.C.A. § 5106a (2005).

¹⁴⁷ Perman, *Legal Protections*, *supra*.

¹⁴⁸ *See Harville*, 95 F. App’x at 726; *See also Johnson*, 2001 WL 34091570, at *5.

¹⁴⁹ *See Johnson*, 2001 WL 34091570, at *5.

Good faith reporting may require acting with the child's best interests in mind.¹⁵⁰ This aspect of good faith may be harder to disprove or prove, depending on wherein lies the burden of proof, because it necessitates that the physician acted with a “pure heart and empty head.”¹⁵¹ Should a court take this information from an accused physician at face value? While this proposition may seem outrageous to some, others may be able to justify it, based on the public policy of child protection. Although, it seems more reasonable to dismiss the *Johnson* court's articulation of such an impractical, while seemingly eloquent, standard because under such a standard, external evidence is not possible to prove that the physician acted with a pure heart. A less subjective standard should be favored, where objective, extrinsic evidence is possible to prove or disprove good faith. This standard would serve as a means of uniformity among court rulings across the country.

The argument for such a lofty standard will undoubtedly raise that question as to why such a standard is, if at all, proper, and what dictates the requirement of such a standard. The public policies articulated by the courts in *Harville*, *Johnson*, and *Yuille* certainly address skeptics of this standard. Public policy concerns are prevalent throughout Munchausen Syndrome by Proxy physician liability cases.¹⁵² The *Harville* court focused on the importance of encouraging suspected cases of child abuse to be reported.¹⁵³ The *Yuille* court also focused on the policy of encouraging suspected cases of child abuse to be reported, and went so far as to say that a physician should *not* be required to investigate suspected child abuse cases because this would hinder reporting.¹⁵⁴ The *Johnson* court, however, implied that investigation may be

¹⁵⁰ See *Yuille*, 45 P.3d at 1111.

¹⁵¹ *Johnson*, 2001 WL 34091570, at *5.

¹⁵² See *Harville*, 95 F. App'x at 725-26.; See also *Yuille*, 45 P.3d at 1111.; See also *Id.* at *4.

¹⁵³ See *Harville*, 95 F. App'x at 725-26.

¹⁵⁴ *Yuille*, 45 P.3d at 1111.

necessary, and held that physician immunity is required so that suspected child abuse may be reported “without fear of reprisal.”¹⁵⁵

B. Additional Reporting Requirements

Additional requirements for a physician to have reported suspected child abuse in good faith existed in *Johnson v. Pediatric Specialists of Sioux Falls*. The *Johnson* court held that physicians should be immune from liability as long as they act in good faith in making a Munchausen Syndrome by Proxy diagnosis, and subsequently make a timely report of this suspected abuse to the proper authorities.¹⁵⁶ In holding the physician in *Johnson* to a higher standard than good faith, the court placed an undue burden on the state’s physicians. While *Johnson* articulated the policy of being able to report child abuse without repercussions,¹⁵⁷ additional requirements besides good faith in reporting seem to violate the spirit of this policy goal. If a requirement is placed on physicians that dictates during what time period they should report suspected abuse if they wish to remain free from personal liability, this requirement could deter physicians from reporting cases in which the victim falls outside of the specified reporting period.

In addition to differences in reporting requirements, a different standard of review has been used in different state courts. The Sixth Circuit Court of Appeals held that to deprive a physician of immunity in reporting, “[p]laintiffs must show by clear and convincing evidence,

¹⁵⁵ *Johnson*, 2001 WL 34091570, at *4.

¹⁵⁶ See Perman, *Legal Protections*, *supra*.

¹⁵⁷ See *Johnson*, 2001 WL 34091570, at *4.

that Defendants acted in bad faith.”¹⁵⁸ Thus, in *Harville*, the burden of proof rested on the alleged MSBP perpetrator to prove that the physician reported in bad faith. In contrast, the Court of Appeals of Washington determined that “[t]he reporter has the burden of proving the report of abuse was made in good faith.”¹⁵⁹ Accordingly, Washington places the burden of proof on the physician who suspects the alleged Munchausen Syndrome by Proxy abuse.

V. CONCLUSION

Since its identification in 1977¹⁶⁰, Munchausen Syndrome by Proxy has become increasingly more prevalent.¹⁶¹ Consequently, uniformity in reporting requirements is necessary to address this issue. Good faith, with no additional reporting requirements, such as timeliness or a pure heart standard, should be adopted. Such a standard would encourage physicians to report suspected cases of Munchausen Syndrome by Proxy, without having to worry about civil liability towards the accused parents.

There are those who are opposed to having a low standard of reporting suspected cases of Munchausen Syndrome by Proxy. The Mothers Against Munchausen Syndrome by Proxy Allegations (MAMA) believe that MSBP is reported by physicians with ulterior motives.¹⁶² MAMA’s founder Julie Patrick believes that “allegations are used by a doctor or institution to evade a medical malpractice lawsuit, or to simply rid themselves of a troublesome mom when

¹⁵⁸ *Harville*, 95 F. App’x at 726.

¹⁵⁹ *Yuille*, 45 P.3d at 1110.

¹⁶⁰ *McMullen*, 900 A.2d at 109.

¹⁶¹ *Sweet*, *supra* at 91.

¹⁶² Diane Lore, *Munchausen’s Syndrome by Proxy: A Mother’s Deceit, A Child’s Torment Condition is Hard to Spot, Prove, Prosecute and Treat Because Perpetrators are Locked into Denial*, Atlanta J. & Const., June 7, 2000, at C1.

unable to diagnose a child's condition.”¹⁶³ It is not only mothers who are opposed to such a low standard of reporting—physicians are as well.¹⁶⁴ The University of Cambridge's Dr. C.J. Morley believes that the term Munchausen Syndrome by Proxy should be abandoned and instead a description of what was done to the child should be given.¹⁶⁵ Morley recognizes the importance of protecting a child who is being harmed, yet he holds equally important the policy of preventing a child's family from wrongly being broken up.¹⁶⁶

While there may be drawbacks to having a low standard for reporting child abuse, specifically Munchausen by Proxy Syndrome, it is important to look at the policy considerations of why physicians and other medical professionals are protected from faulty reporting. The Tennessee and Washington Codes both highly encourage the reporting of suspected child abuse, and the Washington Code goes so far as to make it a gross misdemeanor to fail to report this suspected abuse.¹⁶⁷ “The goal must be to err on the side of doing what is best to protect the child.”¹⁶⁸ Accordingly, a uniform standard of good faith with no additional reporting requirements best serves this policy of child protection.

¹⁶³ *Id.*

¹⁶⁴ *See Id.*

¹⁶⁵ *Id.*

¹⁶⁶ *See Id.*

¹⁶⁷ *See Yuille*, 45 P.3d at 1110-11; *See also Harville*, 95 F. App'x at 725.

¹⁶⁸ Katz, *supra* at B5.